

150 FERC ¶ 61,200  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

The Empire District Electric Company

Docket Nos. ER14-2882-000  
EL14-73-000

ORDER ON COMPLIANCE FILING

(Issued March 19, 2015)

1. On September 15, 2014, in response to the Commission's July 17, 2014 order,<sup>1</sup> Empire District Electric Company (Empire) submitted proposed revisions to its transmission formula rate protocols under Empire's Open Access Transmission Tariff (Empire Tariff) and Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (SPP Tariff).<sup>2</sup> In this order, we conditionally accept Empire's Compliance Filing, effective April 1, 2015, as requested, subject to a further compliance filing.

**I. Background**

**A. MISO Protocols Orders**

2. On May 17, 2012, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>3</sup> into the formula rate protocols of Midwest Independent Transmission System Operator, Inc. (MISO)<sup>4</sup> finding they may lead to unjust and unreasonable rates. The Commission specifically identified three areas of concern: (1) scope of participation (i.e., who can participate in the information exchange); (2) the

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<sup>1</sup> *The Empire District Elec. Co.*, 148 FERC ¶ 61,030 (2014) (July 17 Order).

<sup>2</sup> In the July 17 Order, the Commission noted that Empire's formula rate protocols are on file with the Commission in both the Empire Tariff and the SPP Tariff. *Id.* n.2. However, Empire has only submitted proposed protocols revisions for Empire's Tariff.

<sup>3</sup> 16 U.S.C. § 825e (2012).

<sup>4</sup> Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

transparency of the information exchange (i.e., what information is exchanged); and (3) the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange (i.e., how the parties may resolve their potential disputes).<sup>5</sup>

3. After receiving comments from parties to the proceeding, on May 16, 2013, the Commission found that the formula rate protocols under the MISO Tariff were insufficient to ensure just and reasonable rates, and therefore, directed MISO and its transmission owners to file revised formula rate protocols to address the Commission's concerns about the scope of participation, the transparency of the information exchange, and the ability of customers to challenge transmission owners' implementation of the formula rate as a result of the information exchange.<sup>6</sup> On March 20, 2014, the Commission conditionally accepted, subject to further compliance, MISO's proposed Tariff revisions made in compliance with the MISO Investigation Order.<sup>7</sup> Among the requirements addressing the transparency of the information exchange, in the MISO Investigation Order, the Commission required MISO to include a provision in the formula rate protocols that transmission owners make annual informational filings of their formula rate updates with the Commission.<sup>8</sup> Further, on May 19, 2014, MISO submitted a compliance filing in response to the MISO Compliance Order. The Commission conditionally accepted that compliance filing on January 22, 2015.<sup>9</sup>

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<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 8 (2012).

<sup>6</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

<sup>7</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (MISO Compliance Order) (2014). The Commission also separately evaluated the compliance filings of two MISO transmission owners. *See Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,210 (2014) (evaluating the compliance filing of Southern Indiana Electric & Gas Company (Southern Indiana)); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,211 (2014) (evaluating the compliance filing of Northern Indiana Public Service Company (NIPSCO)).

<sup>8</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

<sup>9</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015) (Second MISO Compliance Order); *see also Midcontinent Indep. Sys. Operator, Inc. and Northern Indiana Public Service Company*, 150 FERC ¶ 61,022, at P 17 (2015) (NIPSCO Second Compliance Order) and *Midcontinent Indep. Sys. Operator, Inc. and Southern Indiana Gas & Electric Company*, 150 FERC ¶ 61,023, at P 18 (2015) (Southern Indiana Second Compliance Order).

**B. Empire Protocols Order (July 17 Order)**

4. In the July 17 Order, the Commission explained that it had undertaken a review of the transmission formula rates and formula rate protocols of jurisdictional public utilities to identify utilities that currently are not required to make annual informational filings of their formula rate updates with the Commission, and identified Empire as one such utility.<sup>10</sup> The Commission found that the then-effective Empire formula rate protocols were deficient in all three areas of concern identified in the MISO Investigation Order and the MISO Compliance Order, and thus appeared to be unjust and unreasonable.<sup>11</sup> The Commission directed Empire to file revisions to its formula rate protocols to conform to the requirements of the MISO Investigation Order and MISO Compliance Order, or show cause why it should not be required to do so.<sup>12</sup>

**II. Notice of Filing and Responsive Pleadings**

5. Pursuant to the July 17 Order, interventions in Docket No. EL14-73-000 were due within 30 days of publication of notice in the *Federal Register* of the Commission's initiation of section 206 proceeding, i.e., due by August 22, 2014.<sup>13</sup> Timely motions to intervene in Docket No. EL14-73-000 were filed by: SPP; Sunflower Electric Power Corporation and Mid-Kansas Electric Company; the Missouri Public Service Commission (Missouri Commission); and Cities of Monett, Mount Vernon, and Lockwood, Missouri and Chetopa, Kansas (Empire Cities). On February 6, 2015, City Utilities of Springfield, Missouri (Springfield) filed a motion to intervene out of time.

6. Notice of Empire's Compliance Filing in Docket No. ER14-2882-000 was published in the *Federal Register*, 79 Fed. Reg. 56,796 (2014), with interventions and protests due on or before October 6, 2014. On September 30, 2014, the State Corporation Commission of the State of Kansas (Kansas Commission) filed a motion for an extension of time to respond to the Compliance Filing. On October 3, 2014, the Commission granted the Kansas Commission's motion, extending the deadline to file comments, protests, and motions to intervene to and including October 27, 2014.

7. On September 16, 2014, SPP filed a motion to intervene. On October 9, 2014, Empire Cities filed a motion to intervene and limited protest. On October 24, 2014, Empire filed a motion for leave to answer and answer to Empire Cities' limited protest

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<sup>10</sup> July 17 Order, 148 FERC ¶ 61,030 at P 7.

<sup>11</sup> *Id.* PP 5-6.

<sup>12</sup> *Id.* PP 7, 29.

<sup>13</sup> *Id.* P 32; 79 Fed. Reg. 42,786 (2014).

(Empire October 24 Answer). On October 27, 2014, the Missouri Commission filed a notice of intervention and comments in Docket Nos. EL14-73-000 and ER14-2882-000. On October 27, 2014, the Kansas Commission filed a motion to intervene and protest in Docket No. ER14-2882-000. On November 12, 2014, Empire filed a motion for leave to answer and answer to the Missouri Commission's comments and the Kansas Commission's protest (Empire November 12 Answer).

### **III. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>14</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene by Springfield given its interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>15</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed by Empire because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. Empire Protocols Revisions Related to a Settlement Agreement**

###### **a. Comments**

10. Empire Cities state that, because the Commission's previous investigation of the MISO Transmission Owners reflected in the MISO Investigation Order took place contemporaneously with settlement negotiations that led to the current Empire formula rate protocols, the outcome of those negotiations was ultimately influenced by the Commission's investigation. Consequently, Empire Cities argue, Empire could have shown good cause that its formula rate protocols should not be disturbed and Empire Cities would have supported such a filing.<sup>16</sup>

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<sup>14</sup> 18 C.F.R. § 385.214 (2014).

<sup>15</sup> 18 C.F.R. § 213(a)(2) (2014).

<sup>16</sup> Empire Cities Protest at 4-5.

**b. Answer**

11. In response to Empire Cities' concern that certain provisions of the Empire protocols that were adopted as a result of settlement were unnecessarily removed, Empire states that it did not believe that the settlement agreement approved in Docket No. ER12-1813-000 "trumped" the need to comply with the July 17 Order.<sup>17</sup> Empire states that the settlement does not include a moratorium on revisions to the protocols and argues that the Commission in the July 17 Order did not preserve provisions agreed to by settlement. However, Empire states that, if the Commission finds that a settlement is adequate cause to retain provisions identified by Empire Cities, Empire will reinstitute any deleted provision as directed.<sup>18</sup>

**c. Commission Determination**

12. We disagree with Empire Cities' assertion that Empire's protocols should have been left undisturbed because of their association with a previous settlement. In the MISO Investigation Order, the Commission established a set of standards for formula rate protocols to provide adequate scope of participation, transparency, and challenge procedures. As noted above, in the July 17 Order, the Commission found that its review indicated that Empire's protocols failed to meet these standards. However, the Commission also stated that Empire may show cause why it should not be required to revise its formula rate protocols. To this end, the Commission will evaluate arguments by Empire or intervenors to this proceeding supporting individual, existing provisions in the protocols on a case-by-case basis. Accordingly, we discuss each of Empire Cities' arguments related to Empire's settlement agreement below.

**2. Scope of Participation**

**a. July 17 Order**

13. In the July 17 Order, the Commission found that Empire's formula rate protocols limited participation in information exchange and challenge procedures regarding annual updates from transmission owners to SPP transmission customers taking transmission service on the Empire facilities operated by SPP and affected state public utility commissions. The Commission required Empire to revise its formula rate protocols to provide all interested parties and the Commission with access to information about the annual updates as directed by the Commission in the MISO Investigation Order and

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<sup>17</sup> Empire October 24 Answer at 4.

<sup>18</sup> *Id.* at 4-5.

MISO Compliance Order,<sup>19</sup> or show cause why it should not be required to do so.<sup>20</sup> In so doing, the Commission noted that it had found MISO's definition of interested parties to be just and reasonable.

**b. Empire Compliance Filing**

14. In Empire's Compliance Filing, section II of the Empire revised formula rate protocols adopts MISO's definition of interested parties.<sup>21</sup> Section II defines interested parties as "all interested parties in information exchange and review processes, including but not exclusive to customers under the SPP Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorneys general." In addition, the defined term "Interested Parties" is used throughout Empire's revised protocols and, according to Empire, affords Interested Parties adequate opportunity for participation and access to information.<sup>22</sup>

**c. Commission Determination**

15. We find that Empire's proposed definition of Interested Parties provides sufficient scope of participation for its protocols and will, therefore accept this proposed revision, with no further modifications.

**3. Transparency**

**a. July 17 Order**

16. In the July 17 Order, the Commission found that the Empire formula rate protocols do not provide all interested parties the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate, which would form the basis of any potential challenge.<sup>23</sup> Specifically, the Commission noted that, while the Empire formula rate protocols provide that Empire will post its Annual Update on the SPP Open Access Same-Time Information System (OASIS) website, the protocols did not require posting on the SPP website.

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<sup>19</sup> July 17 Order, 148 FERC ¶ 61,030 at P 11, n.21.

<sup>20</sup> *Id.* P 13.

<sup>21</sup> Empire Compliance Filing, Transmittal at 3.

<sup>22</sup> *Id.*

<sup>23</sup> July 17 Order, 148 FERC ¶ 61,030 at PP 18-23.

17. In addition, while Empire's pre-existing protocols provided for electronic notification of its annual updates to only SPP network and point-to-point transmission customers and affected state commissions, they did not provide for electronic notice to other interested parties. The Commission required Empire to notify any interested party, through an e-mail distribution list, of its postings related to the annual updates and, if appropriate, true-up adjustments. The Commission also found that Empire's formula rate protocols should explicitly include a provision that allows interested parties to obtain upon request information on procurement methods and cost control methodologies used by Empire in order to facilitate interested parties' analysis of whether Empire's costs were prudently incurred.

18. The Commission also found that Empire's protocols should provide a commitment by Empire to endeavor to coordinate with other transmission owners in SPP to hold a joint meeting to discuss transmission projects which utilize regional cost allocation.<sup>24</sup> In addition, to allow the Commission to perform its duty to ensure just and reasonable rates, the Commission determined that information such as the annual updates, true-up adjustments, and data and workpapers sufficiently detailed to support such information must be filed with the Commission in the form of an annual informational filing.

19. The Commission also explained that, in the MISO Investigation Order, it required the MISO Transmission Owners to disclose any accounting changes that affect inputs to the formula rate or the resulting charges during the rate period, including accounting associated with any reorganization or merger transaction. The Commission also provided that, following the annual update, interested parties must be afforded the opportunity to review the information posted and submit reasonable information and document requests to the transmission owner, provided the requests are relevant to the implementation of the formula rate. Interested parties must also be allowed the opportunity to request further information regarding the transmission owner's accounting practices to the extent the accounting impacts items included in the determination of the annual revenue requirement, and to obtain upon request information on procurement methods and cost control methodologies used by the transmission owner.<sup>25</sup> Accordingly, the Commission directed Empire to submit revised protocols to conform to the MISO Investigation Order and the MISO Compliance Order, or show cause why it should not be required to do so.

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<sup>24</sup> The Commission acknowledged that other SPP transmission owners' formula rate protocols may not require such efforts. The Commission stated that in such instances, cooperation of such SPP transmission owners would be necessary for Empire to provide for joint meetings. *Id.* n.33.

<sup>25</sup> *Id.* PP 14-15.

**b. Empire Compliance Filing**

20. In its Compliance Filing, Empire states that its amended formula rate protocols provide that Empire will cause its annual update to be posted on the SPP website and OASIS on or before June 1 of each calendar year.<sup>26</sup> Empire also states that direct access to the member postings on the SPP OASIS will be available via the SPP website.<sup>27</sup> Section 1.3 of Empire's revised protocols states that within ten days of the posting of its annual update Empire shall provide notice via an e-mail distribution list.<sup>28</sup> This section of the protocols also informs Interested Parties that they can request to be added to the e-mail distribution list by contacting Empire.<sup>29</sup> Following the publication of the annual update, Empire's revised protocols state that interested parties shall have until September 15 to serve reasonable information and document requests on Empire.<sup>30</sup>

21. Empire also proposes an annual meeting to be held no later than June 15 of each year, which permits Empire to explain and clarify its annual update and provide interested parties "an opportunity to seek information and clarifications from Empire about the [a]nnual [u]pdate." Empire's revised protocols provide that no less than seven days prior to the annual meeting, Empire shall provide notice on SPP's website and OASIS and the email distribution list of the time, date, and location of the annual meeting.<sup>31</sup>

22. In compliance with the accounting-related requirements, Empire states that section 1.5g of its protocols provides that Empire shall disclose in the annual update "any change in accounting that affects inputs to the Formula Rate or the resulting charges billed under the Formula Rate" defined in Empire's protocols as "Accounting Change." Subsections 1.5.g.i and 1.5.g.iv provide additional detail regarding the types of information regarding any Accounting Change that Empire may provide. Section III.1.a provides that, for each

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<sup>26</sup> Empire Compliance Filing, Transmittal at 4; Empire Compliance Filing, Attachment H-2, Transmission Formula Rate Implementation Protocols, section I.3.

<sup>27</sup> Empire Compliance Filing, Transmittal at 4.

<sup>28</sup> Empire Compliance Filing, Attachment H-2, Transmission Formula Rate Implementation Protocols, section I.3(b).

<sup>29</sup> Empire Compliance Filing, Transmittal at 4.

<sup>30</sup> Empire Compliance Filing, Attachment H-2, Transmission Formula Rate Implementation Protocols, section III.1.

<sup>31</sup> Empire Compliance Filing, Attachment H-2, Transmission Formula Rate Implementation Protocols, section II.

annual update, Interested Parties may request, among other things, information and documents necessary to determine “the extent or effect of an Accounting Change.” Section III.1.e provides that, for each annual update, Interested Parties may request information and documents necessary to determine “the prudence of actual costs and expenditures.” Further, Empire notes that it has added a section to its protocols that addresses the Commission’s requirements for informational filings, including the provision of information regarding the extent of accounting changes that affect formula rate inputs.<sup>32</sup>

23. Empire states that section VI.1 provides for annual informational filings with the Commission consistent with the Commission’s findings in the MISO Investigation Order and MISO Compliance Order. Section VI.1 also provides that Empire shall provide notice of the information filing via an e-mail distribution list.<sup>33</sup>

24. With respect to the lack of protocols providing for joint meetings with other SPP transmission owners, Empire states that it has discussed that issue with other SPP transmission owners whose formula rate protocols the Commission has determined do not include a joint meeting requirement,<sup>34</sup> and with SPP. Empire explains that, unlike the MISO Transmission Owners who utilize a standard formula rate template available in the MISO tariff, the SPP transmission owners’ formula rates are not based on standard formula rate forms available in the SPP Tariff. Instead, each SPP transmission owner has its own unique formula rate template and protocols, including distinct times for postings, customer meetings, and review periods. Empire states that, based on an informal survey of other SPP transmission owners’ protocols on file with the Commission, Empire is not aware of any SPP transmission owner’s protocols that require a joint meeting. As such, Empire states that it will be limited in its ability to coordinate and host such joint meetings with the other SPP transmission owners. Therefore, Empire states that, if it included a joint meeting requirement in its protocols, it would not be able to satisfy the requirement. Accordingly, Empire submits that there is good cause that a joint meeting provision should not be included in its protocols.<sup>35</sup>

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<sup>32</sup> Empire Compliance Filing, Transmittal at 4-5.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> Empire references Westar Energy, Inc. and Kansas City Power & Light Company.

<sup>35</sup> *Id.* at 5-6.

c. Comments

25. Empire Cities state that they support Empire's showing that a joint meeting discussing regional cost allocation of transmission projects across SPP is not required. Empire Cities agree with Empire that SPP transmission owners do not have a commonly used transmission formula rate or protocols, unlike the MISO Transmission Owners. Empire Cities state that differences among formula rates resulting from distinct negotiations between SPP transmission owners and their respective customers render regional meetings impractical at a minimum.<sup>36</sup>

26. The Kansas Commission requests that the Commission reject the proposed protocols and set the issues of material fact in dispute for evidentiary hearing and settlement procedures.<sup>37</sup>

27. Empire Cities argue that, in removing section II.4 of the protocols, entitling parties to use of a discovery master, Empire has exceeded the scope of the Commission's directives. Empire Cities state that the provision was a valuable and important result of settlement negotiations and that its removal was not required by and contrary to the July 17 Order. Additionally, Empire Cities argue that, because this is the removal of an existing provision, it is distinguishable from the MISO Investigation Order in which the MISO Transmission Owners' protocols did not contain a similar provision.<sup>38</sup>

28. The Kansas Commission argues that, within section I.5 of the Empire protocols, governing the content of the annual update, section I.5(f) appears to grant Empire the right to make adjustments to the inputs of the formula rate and that this section conflicts with the requirement of sections I.5(b) and (c) that the annual update data must be provided "to the extent specified in the formula."<sup>39</sup> The Kansas Commission requests that the Commission clarify that Empire does not have the unilateral discretion to make any adjustments to the inputs of the formula rate, if the formula itself does not specify such adjustments.<sup>40</sup>

29. The Kansas Commission argues that the proposed information exchange language is woefully inadequate when compared to the language directed by the Commission in

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<sup>36</sup> Empire Cities Protest at 5-6.

<sup>37</sup> Kansas Commission Protest at 3-5.

<sup>38</sup> *Id.* at 7-8.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.*

the MISO Investigation Order. Specifically, the Kansas Commission argues that the deadlines proposed by Empire will result in less time for discovery than was required of the MISO Transmission Owners. The Kansas Commission notes that Empire's protocols provide 15 days between posting of the annual update and annual meeting, while the MISO Transmission Owners' protocols provide several months between the annual update and annual meeting.<sup>41</sup> The Missouri Commission requests that, given the shorter time period between the annual update and the annual meeting, the Commission require Empire to shorten the required notification period for the annual update. The Missouri Commission states that the Commission's rules allow notification by e-mail; therefore, Empire could feasibly provide notice on the same day the annual update is posted.<sup>42</sup> The Missouri Commission also argues that the annual meeting deadline should be extended from June 15 to July 1 to allow interested parties more time to review the annual update and that such a revision would reduce the need for informal discovery.<sup>43</sup>

30. The Missouri Commission argues that Empire should be required to offer remote access to interested parties through telephone and/or web access to its annual meeting. The Missouri Commission states that multiple SPP transmission owner annual meetings occur on June 1, preventing travel between locations, and that remote access costs would be negligible.<sup>44</sup>

**d. Answer**

31. In response to Empire Cities' argument regarding the removal of a discovery master provision, Empire states that the proposed revision is consistent with the MISO Compliance Order where the Commission stated that the "protocols contain sufficient informal and formal challenge procedures . . . in order to provide an avenue for disputes that arise during the information exchange process, including the availability of an on-call settlement judge at the Commission."<sup>45</sup> Empire argues that the "sufficient informal and formal challenge procedures" referred to by the Commission in the MISO

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<sup>41</sup> *Id.*

<sup>42</sup> Missouri Commission Protest at 6.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.*

<sup>45</sup> Empire October 24 Answer at 3 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 69; July 17 Order, 148 FERC ¶ 61,030 at P 28).

Compliance Order are the informal and formal challenge procedures that the Commission, in the July 17 Order, directed Empire to include in its protocols.<sup>46</sup>

32. Empire argues that, in describing the timeline for information exchange as woefully inadequate, the Kansas Commission overlooks the fact that Empire has a historical formula rate. Empire asserts that its protocols have at least as much time as the MISO Transmission Owners' protocols for discovery and do not require additional time.<sup>47</sup> Empire contends that the Missouri Commission's proposal for Empire to post the annual update and update its email distribution list on the same day is inconsistent with the MISO Investigation Order and MISO Compliance Order. However, Empire states that it is willing to compromise by providing notification within five days of its annual update. Empire states that many interested parties who have typically participated in review of previous annual updates usually are aware of and have access to the annual update.<sup>48</sup>

33. In response to the Missouri's Commission request that Empire should be required to offer remote access to interested parties, Empire argues that the Commission did not impose such a requirement in the MISO Investigation Order and MISO Compliance Order and should not do so here. Empire asserts that in-person meetings provide the greatest opportunity to vet annual update issues, but notes that it already offers remote access to meetings and will continue to do so at its discretion. Accordingly, Empire states, there is no need to revise the protocols.<sup>49</sup>

34. Empire responds that the Kansas Commission has not shown any issues of material fact warranting a hearing and settlement judge procedures because there are none and that Empire's compliance with the July 17 Order is a matter that can be decided based on the record before the Commission.<sup>50</sup>

**e. Commission Determination**

35. We find that the provisions in Empire's proposed protocols relating to transparency generally comply with the requirements of the July 17 Order. We therefore will conditionally accept them, subject to further compliance, as discussed below.

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<sup>46</sup> *Id.*

<sup>47</sup> Empire November 12 Answer at 2-3.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.* at 4-5.

36. We dismiss the Kansas Commission's request for a full evidentiary hearing of Empire's proposed revisions. Based on our review of the pleadings before us, we see no issues of material fact that necessitate a full evidentiary hearing.

37. We disagree with Empire Cities and find it reasonable for Empire to remove the discovery master provision from its existing protocols. As stated in the MISO Investigation Order, the Commission found that a provision to allow the appointment of a discovery master is unnecessary.<sup>51</sup> The Commission found that the numerous revisions that the Commission required pertaining to the transparency of information supporting transmission owners' annual updates should ensure that interested parties will have access to sufficient information such that it anticipated that such disputes should be comparatively infrequent. Moreover, parties are free to request the appointment of a settlement judge and avail themselves of the on-call settlement judge, as well as the Commission's Dispute Resolution Service to resolve such matters. Similarly, Empire's revised protocols now provide increased transparency and challenge provisions, such that customers will have access to sufficient amount of information in order to understand the transmission owner's updates and the procedures to raise informal and formal challenges.

38. We find that Empire should include tariff language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation. A joint meeting with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects that they develop that are subject to the same regional cost allocation would be an efficient way for such transmission owners to conduct annual meetings to discuss their annual updates, so that parties interested in the annual updates of multiple transmission owners with projects subject to the same regional cost allocation do not have to separately participate in each transmission owner's annual meeting.<sup>52</sup> This could ease the burden of both transmission customers and owners by limiting the number of annual meetings necessary.<sup>53</sup> Moreover, a provision for joint meetings should not be omitted just because it might not be operative under current circumstance. Accordingly, we will direct Empire to include a requirement, in the compliance filing ordered below, that they endeavor to coordinate with other transmission owners using formula rates to establish revenue requirements for recovery

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<sup>51</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 122.

<sup>52</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

<sup>53</sup> *Id.* While we recognize that the formula rate protocols under Empire's Tariff only govern Empire's annual updates, we expect other public utility transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism to cooperate in coordinating to hold joint meetings.

of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.<sup>54</sup>

39. In response to the Kansas Commission's concerns regarding certain provisions of section I.5 of the protocols, which govern the content of the annual update, we disagree that the proposed protocols grant Empire unilateral discretion to change inputs to the formula rate, if the formula itself does not specify such adjustments. Section 1.5(f) requires Empire to describe any modifications to the inputs to the formula rate and does not provide Empire the right to input data other than required by the formula or modify the formula itself. Furthermore, section IV.10 of Empire's revised protocols, accepted further below, provides that any modifications to the formula rate require a filing under section 205 or section 206 of the FPA.<sup>55</sup> Accordingly, we find Empire's proposed section 1.5(f) of its protocols to be just and reasonable.

40. We agree with the Kansas Commission that Empire's proposed protocols for the annual update and annual meeting do not provide an adequate period of time for review. As proposed, Empire's protocols reduce the transparency afforded by the revised protocols by only allowing interested parties, at most, two weeks, and as little as seven days, to review the annual update, an insufficient period of time to prepare for meaningful participation in the annual meeting. While the MISO Compliance Order directed the MISO Transmission Owners to "provide notice of the annual meeting no less than seven days prior to such meeting," so that annual meetings may be held as little as seven days following the annual update, that order merely set forth standards for protocols and did not stipulate that all other formula rate protocols mirror the exact language of the MISO Transmission Owner protocols.<sup>56</sup> Here, the Kansas Commission has demonstrated that the Empire protocols provide an insufficient period to review the annual update prior to the annual meeting. Therefore, we will direct Empire to revise its proposed timeline to provide an adequate time period between the annual update and annual meeting to ensure increased transparency and allow the parties sufficient time to review. Regarding the Missouri Commission's concern with Empire's proposed timeline for providing notice of the annual update, we will direct Empire to revise its proposed protocols in its compliance filing consistent with the compromise proposal it sets forth in its answer.

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<sup>54</sup> Empire would not need to coordinate with transmission owners that do not use formula rates and thus do not update their rates each year.

<sup>55</sup> Empire Compliance Filing, Attachment H-2, Transmission Formula Rate Implementation Protocols, section IV.10.

<sup>56</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

41. We agree with the Missouri Commission's assertion that Empire's formula rate protocols should require Empire to provide remote access to their Annual Update and True-Up Adjustment meetings.<sup>57</sup> We find it reasonable to allow for remote access to ease burdens (e.g., travel costs) to ensure all interested parties have the opportunity to participate in the meetings. We will therefore direct Empire to modify their formula rate protocols to explicitly require remote access for participation at Annual Update meetings and True-Up Adjustment meetings.

42. We find that Empire has complied with the Commission's directives in the July 17 Order to file an annual informational filing. We remind Empire that, consistent with the directives in the Southern Indiana and NIPSCO Second Compliance Orders,<sup>58</sup> that Empire is required to file its annual informational filing in a new docket each year.

#### **4. Challenge Procedures**

##### **a. July 17 Order**

43. In the July 17 Order, the Commission found that the Empire formula rate protocols regarding challenge procedures do not fully provide the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures, as directed by the Commission in the MISO Investigation Order. The Commission further explained that formal challenges are distinct from, and in addition to, the ability to file complaints pursuant to section 206 of the FPA.<sup>59</sup> The Commission found that Empire's protocols included provisions for informal and formal challenges, but required that formal challenges be complaints filed pursuant to section 206 of the FPA.

44. In addition, while the Empire formula rate protocols provided that an Interested Party may file a formal challenge, the protocols required interested parties to file such challenges pursuant to section 206 or 306 of the FPA. The Commission found that provision to be inconsistent with the aforementioned informal and formal challenge procedures set forth in the MISO Investigation Order and MISO Compliance Order. Accordingly, the Commission directed Empire to submit revised protocols to conform to

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<sup>57</sup> Missouri Commission Protest at 7.

<sup>58</sup> See NIPSCO Second Compliance Order, 150 FERC ¶ 61,022 at P 17; Southern Indiana Second Compliance Order, 150 FERC ¶ 61,023 at P 18.

<sup>59</sup> July 17 Order, 148 FERC ¶ 61,031 at P 26 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 109; *Midcontinent Independent System Operator, Inc. and Southern Indiana Gas & Elec. Co.*, 146 FERC ¶ 61,210, at P 53 (2014)).

the MISO Investigation Order and the MISO Compliance Order, or show cause why it should not be required to do so.

**b. Empire Compliance Filing**

45. In its Compliance Filing, Empire states that section IV of its proposed formula rate protocols incorporates informal and formal challenge procedures that satisfy the Commission's requirement and provides a structured timeline that allows the review process to be completed before the next year's posting. Empire states that it has ensured that the deadline for submission of an informal challenge in the protocols allows Interested Parties adequate opportunity to evaluate responses to information requests. In addition, Empire states that the defined periods during which Interested Parties may make an informal or formal challenge afford Interested Parties ample time after Empire posts an annual update to submit informal and formal challenges. Empire further states that its protocols strike a balance between requiring Interested Parties to engage in the challenge procedures prior to filing an informal or formal challenge and allowing Interested Parties the ability to raise new issues in challenges.<sup>60</sup>

46. Empire states that section IV.2 of Empire's proposed protocols provides the minimum requirements for an informal challenge. It also provides that Empire shall make a good faith effort to respond to any informal challenge within 20 days, and, where applicable, shall appoint a senior representative to work toward resolving issues raised in the informal challenge. Empire further states that section IV.4 provides the permitted scope of the informal and formal challenges, section IV.8 clarifies that Empire shall bear the burden of proof in any formal challenge filed with the Commission, and section IV.9 adopts language from the MISO protocols that clearly provides that nothing in the protocols shall limit rights under section 206 of the FPA.<sup>61</sup>

**c. Comments**

47. The Kansas Commission states that the proposed challenge procedure timeline requires that an interested party file a formal challenge before Empire submits its annual informational filing. The Kansas Commission argues that such a timeline is inconsistent with the Commission's directives in July 17 Order and the MISO Investigation Order that an interested party file formal challenges in the same docket as the informational filing.<sup>62</sup> The Missouri Commission agrees and notes that it is unclear how an interested party can

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<sup>60</sup> Empire Compliance Filing, Transmittal at 7.

<sup>61</sup> *Id.*

<sup>62</sup> Kansas Commission Protest at 5.

file its formal challenge by January 31 in the same docket as the informational filing, which is required to be filed on March 1.<sup>63</sup>

48. Empire Cities argue that the Commission identified as unjust and unreasonable only the requirement that a formal challenge be filed pursuant to sections 206 or 306 of the FPA, but that Empire's proposed revisions substantially change the protocols to the detriment of rights negotiated by customers. Empire Cities also note that the Empire protocols previously contained no time limit on raising formal challenges and argue that the proposed January 31 deadline represents a truncation of an interested party's rights. However, Empire Cities state that they do not oppose the proposed challenge process provided that the Commission clarifies that the proposed revisions to Empire's protocols preserve their challenge rights under section 206 of the FPA. Empire Cities state that, according to their understanding of the proposed challenge procedures, an interested party may either bring a challenge pursuant to the process established by the protocols, which may include time limits, or bring action under the FPA. Empire Cities request that the Commission reject the revisions to the challenge procedures if it does not provide such clarification.<sup>64</sup>

49. The Missouri Commission argues that Empire's proposed changes to the challenge procedures exceed the Commission's directives in the July 17 Order in two ways. First, the Missouri Commission asserts that Empire should revise sections 3(a)i and 3(a)ii of its protocols to provide that interested parties challenge alleged violations of the application of the formula rate rather than the rate itself. Second, the Missouri Commission argues that an interested party should not be required to describe why it did not raise a particular issue in an informal challenge in order to file a formal challenge. The Missouri Commission argues that this requirement exceeds the Commission's directives established in the MISO Compliance Order and that section 3(a)viii of the Empire protocols should be revised accordingly. Empire Cities argue that the proposed revision puts process over substance.

**d. Answer**

50. In response to the Kansas and Missouri Commissions' arguments that the formal challenge and informational filing deadlines are inconsistent with the requirements of the July 17 Order, Empire proposes to revise sections IV.7 and VI.7 of its protocols to provide that Empire will submit its informational filing on January 15 and that interested parties have until March 1 to submit formal challenges.<sup>65</sup>

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<sup>63</sup> Missouri Commission Protest at 8-9.

<sup>64</sup> Empire Cities Protest at 10-12.

<sup>65</sup> Empire November 12 Answer at 4-5.

51. Empire argues that Empire Cities' claim that Empire's proposed revisions to its challenge procedures are detrimental to its transmission customers overlooks the Commission's findings in the MISO Investigation Order and the July 17 Order. Empire states that, in those orders, the Commission distinguished the formal challenge procedures and complaints made pursuant to section 206 of the FPA. Empire states the proposed revisions to its protocols also makes this distinction.<sup>66</sup>

**e. Commission Determination**

52. We find that the provisions in Empire's proposed protocols relating to informal and formal challenge procedures generally comply with the requirements of the July 17 Order. We therefore will conditionally accept them, subject to further compliance.

53. We will accept Empire's proposed formal challenge filing requirements, with the exception of Empire's proposed formal challenge filing deadline. As noted by the Kansas Commission, Empire's proposal is inconsistent with the Commission's directives in the MISO Compliance Order, which required that formal challenges be filed in informational filing docket numbers and that the MISO Transmission Owners must provide a reasonable amount of time after the informational filing before formal challenges are due.<sup>67</sup> Therefore, we will require Empire to revise its protocols to provide that Empire shall submit its informational filing by January 15 and that interested parties shall have until March 1 to submit formal challenges, as proposed in Empire's November 12 Answer.

54. In response to Empire Cities' request for clarification regarding formal challenges, we clarify that the revisions required in the July 17 Order and those proposed in Empire's protocols in no way remove an interested party's right to file a complaint pursuant to section 206 of the FPA. We agree with Empire that, in previous determinations, the Commission distinguished between formal challenges and complaints made pursuant to section 206. Specifically, the Commission stated in the MISO Investigation Order that "interested parties must be permitted to raise a formal challenge with the Commission, in which the transmission owner—as the utility proposing to charge the updated or true-up rate—would bear the burden of demonstrating the correctness of its update or true-up,"<sup>68</sup> and in the MISO Compliance Order that "the Commission has long held that a transmission owner's formula rate protocols must not impede the statutory rights of the Commission or other interested parties to initiate complaint proceedings pursuant to

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<sup>66</sup> *Id.* at 4.

<sup>67</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 113.

<sup>68</sup> MISO Investigation Order, 143 FERC ¶ 61,149 at P 120.

section 206 of the FPA.”<sup>69</sup> As required by the Commission in the July 17 Order, Empire’s proposed protocols provide that Empire shall bear the burden of proof in any formal challenge and that nothing in the protocols shall limit an interested party’s rights to file a complaint pursuant to section 206 of the FPA.

55. We disagree with the Missouri Commission’s contention that Empire should clarify in sections IV.3(a)i and IV.3(a)ii that challenges are to the application of the formula rate. We find that proposed section IV.10 sufficiently clarifies that challenges made under the challenge procedures are not challenges to the rate itself, and that any changes to the formula rate must be made pursuant to a section 205 or 206 filing. Nothing in the proposed language in sections IV.3(a)i and IV.3(a)ii contradicts the language of section IV.10.

56. We also reject the Missouri Commission’s and Empire Cities’ request to remove Empire’s proposed requirement for an interested party to explain why it did not raise a particular issue in an informal challenge to file a formal challenge. As explained in the Second MISO Compliance Order, “[r]equiring an interested party to explain the extent to which an informal challenge was or was not raised on an issue raised in a formal challenge adds minimal burden and can assist the Commission in deciding what procedures may be appropriate for resolving the challenge.”<sup>70</sup>

## **5. Conditional Acceptance and Further Compliance Filing**

57. Based on the discussion above, we will conditionally accept Empire’s Compliance Filing, effective April 1, 2015, as requested, subject to a further compliance filing to be filed within 60 days of the date of this order. In addition, as noted above, Empire filed its proposed protocols under only the Empire Tariff. However, Empire’s formula rate protocols are also on file in the SPP Tariff.<sup>71</sup> To ensure that its formula rate protocols are the same under both tariffs, Empire should also take all necessary steps to have SPP make a parallel filing making the same protocol revisions to the Empire protocols in the SPP Tariff, within 60 days of the date of this order.

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<sup>69</sup> MISO Compliance Order, 146 FERC ¶ 61,212 at P 110 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 113 (2009)).

<sup>70</sup> 150 FERC ¶ 61,025 at P 53.

<sup>71</sup> *Supra* note 2.

The Commission orders:

(A) Empire's Compliance Filing is hereby conditionally accepted, effective April 1, 2015, as requested, as discussed in the body of this order.

(B) Empire is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) Empire is hereby directed to take all necessary steps to have SPP make a compliance filing to incorporate the same revisions to the Empire protocols in the SPP Tariff, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.